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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 727 (JSR)

5 LILIAN JAKACKI, MARCIN  
6 JAKACKI, MW&W GLOBAL  
7 ENTERPRISES, INC., EUROPEAN  
8 APOTHECARY, INC., ROBERT  
9 CYBULSKI,

Defendants.

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10 New York, N.Y.  
11 February 25, 2016  
12 2:10 p.m.

13 Before:

14 HON. JED S. RAKOFF,

15 District Judge

16 APPEARANCES

17 PREET BHARARA,  
18 United States Attorney for the  
19 Southern District of New York  
20 SIDHARDHA KAMARAJU  
21 LOUIS PELLEGRINO  
22 Assistant United States Attorneys

23 ADAM PERLMUTTER  
24 Attorney for Defendants Lilian Jakacki, MW&W Global  
25 Enterprises, Inc. and European Apothecary, Inc.

LINDSAY A. LEWIS  
WHITNEY G. SCHLIMBACH  
Attorneys for Defendant Marcin Jakacki

JOHN RAPAWY  
Attorney for Defendant Robert Cybulski

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1 THE DEPUTY CLERK: It is February 25th, 2016. This is  
2 United States versus Jakacki, et al., Docket No. 15 CR 727,  
3 defendants 1, 2, 3, 4 and 5. Will everyone please be seated  
4 and will the parties please identify themselves for the record.

5 MR. KAMARAJU: Good afternoon, your Honor. Sidhardha  
6 Kamaraju and Louis Pellegrino, on behalf of the government.

7 THE COURT: Good afternoon.

8 MR. PELLEGRINO: Good afternoon.

9 MS. LEWIS: Good afternoon, your Honor. Lindsay  
10 Lewis, on behalf of Marcin Jakacki, and with me is Whitney  
11 Schlimbach, same office.

12 MR. RAPAWY: Appearing for the defendant Mr. Robert  
13 Cybulski, who's standing to my right, John Rapawy. Good  
14 afternoon, your Honor.

15 THE COURT: Good afternoon.

16 MS. LEWIS: I'd just like to add, your Honor, I'm  
17 under the impression from Lilian Wieckowski that her attorney,  
18 Adam Perlmutter, may have thought the conference was at 4:30  
19 today. So I've tried to contact him; I was just out in the  
20 hall trying to reach him.

21 THE COURT: Well, we'll proceed and hopefully he'll  
22 show up by 4:30, but everyone else knew this was for  
23 4:00 o'clock so I'm not sure why he did you not, but in any  
24 event, we'll go forward.

25 A number of motions have been filed. I wanted to get

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1 what the government's position is on the suppression motion.

2 MR. KAMARAJU: Your Honor, the government's view of  
3 the suppression motion, actually, is likely moot because this  
4 is one of those iPhone 6s that has sort of been in the news  
5 recently; we're not able to access it in any event, so there's  
6 no evidence to be suppressed.

7 To the extent there were any evidence, we think that  
8 the suppression motion would fail. The defense --

9 THE COURT: But here's the point: You can't leave  
10 your adversary hanging. Either you have to represent that you  
11 are not going to be introducing that evidence, in which case  
12 it's all moot, or if you think there's even a possibility that  
13 you're going to introduce it, then we either have to have a  
14 suppression hearing or if you think it can be disposed of by a  
15 briefing, we'll set a briefing schedule.

16 So which of those possibilities do you want to elect?

17 MR. KAMARAJU: We don't believe we're going to be able  
18 to get into the phone, so we won't use the --

19 THE COURT: You won't use the evidence. Okay, so that  
20 motion is in effect granted but for the reason that the  
21 evidence will not be used.

22 Now, there was a motion for a severance. What's the  
23 government's view of that?

24 MR. KAMARAJU: The government thinks that that motion  
25 should be denied, your Honor.

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1 THE COURT: Because?

2 MR. KAMARAJU: For several reasons. One, the policy,  
3 generally, of trying defendants together, particularly when  
4 they're indicted and, as in this case, are charged with a  
5 common cause or conspiracy, I think, favors or counsels in  
6 favor of denying the motion for severance, in particular, I  
7 think the arguments that Mr. Cybulski has raised, specifically,  
8 that there would be evidence that he believes may be  
9 prejudicial to him and that he bears some lower level of  
10 culpability, and, third, that he is not charged in particular  
11 crimes none of those warrant severance.

12 First, with respect to the evidence: Mr. Cybulski is  
13 charged in a common narcotics conspiracy, as your Honor is  
14 aware, with both Lilian and Marcin Jakacki. As with any normal  
15 narcotics conspiracy, evidence of the conspiracy broadly and of  
16 his coconspirators' action would be admissible against him even  
17 if he had a separate trial. So, the concept of spillover  
18 prejudice from those aspects of the government's case, I think,  
19 can be disposed of readily.

20 Then with respect to varying layers of culpability,  
21 the Second Circuit has recognized that that alone is not  
22 sufficient to warrant severance because inevitably in a  
23 multidefendant trial you're going to have varying levels of  
24 culpability. And in this case, as is alleged in the  
25 indictment, while the Jakackis may have been sort of the

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1 suppliers, as in any narcotics conspiracy, you need suppliers  
2 and you need purchasers and distributors. And Mr. Cybulski is  
3 alleged to have been one of, if not, the largest of the  
4 purchasers, so we don't think as -- you're not trying the Chapo  
5 Guzman with a courier on the street; we're trying members of  
6 the conspiracy who are all within the same ballpark of  
7 culpability and so we don't think there's an issue there with  
8 respect to sort of any prejudice flowing from that.

9 Finally -- and this is a point that defense counsel  
10 made in their motion -- the fact that the Jakackis, and in  
11 particular Lilian Jakacki, is charged with some crime such as  
12 Medicare or health care benefits fraud, that Mr. Cybulski is  
13 not, that also is not a basis for severance. In particular,  
14 the Court can cure any potential prejudice with an instruction  
15 by, one, obviously going through the various counts, as I know  
16 your Honor will, and directing the jury that they are to  
17 consider the defendants' guilt individually and the evidence  
18 with respect to each defendant individually. So we don't think  
19 the fact that there's a charge against one defendant that's not  
20 brought against another warrants severance. If it did, there  
21 would be any number of trials that could not be conducted  
22 together.

23 So, for those reasons, the government doesn't think  
24 there's a basis to sever, particularly in light of the  
25 well-established preference to try defendants charged with

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1 common crimes in the same trial.

2 THE COURT: All right, anything defense counsel wanted  
3 to say on that issue?

4 MR. RAPAWY: No, your Honor. I'll rely on what I put  
5 in my papers. I just thought that the really interesting  
6 issue, your Honor, is something that, a lot of times as defense  
7 counsel we have to speculate as to what a potential prejudice  
8 would be. In this case, a few days before the motion was due,  
9 Mr. Cybulski called me up in a panic because he had gone to his  
10 local pharmacy and he tried to fill a prescription and the  
11 pharmacist said that he was denied.

12 I, of course, got in touch with the pharmacy and they  
13 told me that he was denied because of an office of Medicaid  
14 investigation into his role in a billing scheme to defraud  
15 Medicaid. He then provided me with a letter that he had  
16 received in the mail. So we actually see, your Honor, a case  
17 where I don't have to make an argument that there could be a  
18 prejudice; there's already been a prejudice, it's something  
19 that's happened, through no fault of Mr. Cybulski. The Office  
20 of the Medicaid Inspector could not discern that Mr. Cybulski  
21 was not charged in any sort of a scheme to bill fraudulently  
22 the Medicaid unit and yet they lumped him into that part of the  
23 conspiracy. And when I actually spoke to them to try to  
24 clarify that, they said, well, he's charged with fraud,  
25 Medicaid fraud. I said, but he's not. I said, a more careful

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1 inspection of the indictment will show you that he's only  
2 charged in Count One.

3 And after I got them on the telephone and after I  
4 spent several hours with them -- excuse me my voice, I'm just  
5 getting over an illness, but after I spent several hours with  
6 them on the telephone, they then came to their senses, they  
7 rescinded that denial and they reinstated Mr. Cybulski into the  
8 New York State Medicaid program.

9 Now, that's something that shouldn't have happened.  
10 It's a clear example, your Honor, of a prejudice of something  
11 that maybe shouldn't have happened but that did. The argument  
12 that I read in the papers was, this is the office of Medicaid.  
13 Can you imagine what the jury will sit there and think when  
14 they're listening to this? I think, for that and for other  
15 reasons that I of course state in my motion, I think there are  
16 a lot of reasons that Mr. Cybulski will be lumped, for lack of  
17 a better term, into this conspiracy, something that he wasn't a  
18 part of. And I think it's going to be very clear that of all  
19 the evidence against him, evidence against him is a very, very  
20 small part of the total proof.

21 That's all I'd like to say about that.

22 THE COURT: Thank you very much.

23 I am interested in what you say about your experience  
24 with the Medicaid office, but I don't think comparing that to  
25 jurors is very fair to jurors. At least my experience with

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1 bureaucrats is, they have obstinacy all their own that everyday  
2 jurors, thank God, do not possess.

3 And getting really more to the point, while of course,  
4 there are cases where a severance should be granted, and I've  
5 done that on occasion, my own experience, over 20 years now on  
6 the bench, is that when you have someone who is not the subject  
7 of a lot of the evidence because they're charged either with  
8 fewer charges or just one aspect of a charge or whatever, that  
9 in fact it almost always redounds to their benefit, not to  
10 their detriment, and that the jury views them as kind of small  
11 fry or outsiders or add-ons and often you see acquittals in  
12 those situations.

13 So, it's not by any means clear to me that the fear  
14 that is expressed in these situations about someone being  
15 lumped in with the others in charges that they're not charged  
16 with, in fact, is the way that juries think. I actually think,  
17 if anything, it cuts the other way.

18 In any event, for basically the reasons stated by  
19 government, the motion for a severance is denied.

20 Now, by the way, both parties that have filed motions  
21 have asked if they can incorporate the motions of the other  
22 party; and that, of course, is fine with the Court. So, any  
23 motion made by any counsel here will be deemed to have been  
24 made by all counsel unless it either on its face is very  
25 particular to one defendant, as this particular motion is, or



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1 some attorney tells me they don't want to be joined in.  
2 Otherwise, I'll assume that all the motions are joined in by  
3 all defendants.

4 MS. LEWIS: Your Honor, can I just ask one question in  
5 that regard? I just wanted to point out that in the motions on  
6 behalf of Mr. Jakacki, we had mentioned we would want to join  
7 in motions that inure to our benefit, but specifically with  
8 severance at this time we weren't prepared to make that  
9 decision.

10 THE COURT: If you wanted a severance, now is the time  
11 to do it; and you didn't move for a severance, so that has been  
12 waived. That's a different question. If to the extent you  
13 join in the motion he made, I'm denying the motion for him and  
14 I am denying it for you. And I don't see what the argument  
15 would be for you in any event, but if you had a separate motion  
16 on separate grounds, that should have been filed before today.  
17 There's no reason that motion shouldn't have been made by  
18 today.

19 MS. LEWIS: All right. Thank you.

20 THE COURT: The record should reflect that  
21 Mr. Perlmutter --

22 MR. PERLMUTTER: Judge, I apologize, I had this down  
23 for 4:30 and I am on CJA duty all day, so I have been down  
24 there.

25 THE COURT: Well, just to bring you up to speed, we've

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1 been dealing with things that don't affect your client.

2 MR. PERLMUTTER: I apologize nonetheless, and I am  
3 sorry.

4 THE COURT: All right, no problem.

5 Actually, while we're on the subject that just came  
6 up, both sides asked for leave to file further motions. The  
7 answer to that is no, barring exceptional circumstances. We  
8 set this motion calendar so that everyone would give me your  
9 motions.

10 Now, if there's a motion that you couldn't possibly  
11 have known about because something comes up three weeks from  
12 now that was unforeseen and gives rise to a motion, of course,  
13 on that kind of motion I'll allow it. But just taking the  
14 example at hand, severance, that was a motion that could have  
15 been made and should have been made and I didn't make an  
16 exception; I said all motions should be filed. And so there is  
17 no permission granted to file additional motions. If someone  
18 believes they have a basis to file an additional motion based  
19 on exceptional or unforeseen circumstances, you can jointly  
20 convene a conference, call with the Court, and we'll determine  
21 whether to allow you to file that motion or not.

22 Now, turning to the bill of particulars: First, with  
23 respect to the particulars sought by defendant Cybulski, which  
24 are set forth on page 25 of his omnibus motion, with respect to  
25 Count One, he asked first for the date that Cybulski is alleged

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1 to have become a participant in the conspiracy. That is  
2 granted, and that will also have to be provided for all, each  
3 and every one of the defendants.

4 He then asks for the names of who are the persons  
5 referenced as in that count as "others known and unknown."  
6 That will have to be provided as well.

7 He then asks for the dates Cybulski is alleged to have  
8 ceased conspiring, if any. And if there is such a date, that  
9 will have to be provided and similarly for each of the  
10 defendants.

11 He then asks for the specific dates and pill  
12 quantities and recipient names whereby Cybulski is alleged to  
13 have "regularly visited MW&W with multiple prescriptions,  
14 written in others' names." That is denied. That's the level  
15 of evidentiary detail that a bill of particulars is not the  
16 proper vehicle for.

17 Along the same lines, he's asking the same request  
18 with respect to the allegation that Mr. Cybulski "obtained  
19 oxycodone from Wieckowski or those acting at her direction even  
20 though Cybulski did not have any prescriptions." That is  
21 denied.

22 And, finally, all the same requests with respect to  
23 the allegation that Cybulski obtained oxycodone in his own name  
24 on occasions other than those set forth in the 2013 DEA audit,  
25 that is denied.

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1 Turning to the bill of particulars --

2 MR. KAMARAJU: Your Honor, I'm sorry, may I ask one  
3 question?

4 THE COURT: Yes.

5 MR. KAMARAJU: With respect to the first set of  
6 particulars that were granted, the individual referenced as  
7 others known and unknown.

8 THE COURT: Yes.

9 MR. KAMARAJU: Obviously, as the case proceeds to  
10 trial, the government would continue to investigate. If  
11 additional individuals become known, at that time, as  
12 coconspirators, would we be able to just supplement the bills  
13 of particulars to the defendants?

14 THE COURT: Yes. But you're going to have to make a  
15 showing, if defendants object, as to why you couldn't have  
16 added those names earlier. And to put it another way, it's  
17 really critical, from the defendants' standpoint, to know who  
18 is being claimed to be their coconspirators because it invokes  
19 the hearsay exception, which is often a very major factor in  
20 cases like this. So if a week before trial you add a name and  
21 they object, you're going to have to make one hell of a showing  
22 to me as to why you didn't know sooner than a week before trial  
23 that this guy was a, quote, coconspirator.

24 But with that caveat, yes, there may be names that you  
25 won't be in a position to add until later than the date we are

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1 about to set. The date I'm about to set for the bill of  
2 particulars will probably be in a week but we'll get to that in  
3 a second.

4 With respect to the bill of particulars requested by  
5 counsel for defendant Marcin Jakacki, of course, all the  
6 particulars I did grant are applied to all the defendants but  
7 now there's a request for all locations encompassed by the term  
8 "elsewhere." That is denied. There's a request for names of  
9 individuals, "by name the individuals denoted as 'others known  
10 and unknown.'" I've already granted that, and it's granted  
11 again.

12 With respect to paragraph 2 of Count One, "identify by  
13 name the others to whom the pills were allegedly distributed,"  
14 I want to hear about that in a minute but I'm going to put that  
15 one on hold for a second.

16 With respect to Count One, paragraph 3, the first  
17 request is for the date that Mr. Jakacki became a member of the  
18 conspiracy. That's already been granted. The second is for  
19 the specific dates and amounts of each of the cash payments  
20 alleged to have been collected. That's denied.

21 With respect to paragraph 9 of Count One, the source  
22 of the allegation that MW&W was the leading purchaser of  
23 oxycodone tablets in its zip code between 2010 and 2012. Now,  
24 that is not a proper bill of particulars request, so it is  
25 denied under an application for a bill of particulars; however,

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1 I think it would be appropriate for the government to supply  
2 that information.

3 Any problem with that?

4 MR. KAMARAJU: No, your Honor, we can supply that.

5 THE COURT: Okay, good.

6 And then same thing, the name and location of the  
7 second highest. That's really less important. If the  
8 government has that and they want to supply it, I encourage  
9 them to do it. From the technical standpoint of a bill of  
10 particulars, however, it's denied.

11 MR. KAMARAJU: Just your Honor knows, I think what the  
12 government would supply is, there's a system known as ARCOS  
13 which contains this data and I believe there's a memorandum  
14 that summarizes that, Judge. So we'll produce that.

15 THE COURT: Great, terrific.

16 With respect to Count One, paragraph 11, "Please  
17 identify the fraudulent prescriptions," denied.

18 "Please identify the names of the physicians and  
19 locations of the physician offices for which the prescription  
20 forms were stolen." That is another one I want to hear a  
21 little bit more about in a second.

22 With respect to Count One paragraph 12, "Please  
23 identify the times, dates, locations and individuals involved  
24 and the times that the prescriptions were made out in false  
25 names," that's denied.

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1 And also "the times, dates, locations and individuals  
2 involved and the times that Wieckowski sold oxycodone to  
3 individuals without prescriptions," that is denied.

4 With respect to Count One, paragraph 13 -- well, let  
5 me put it this way: I think you see, from my rulings already,  
6 how I will decide all the rest. We can go through it now if  
7 you want if you have any question about any of them but let's  
8 talk about the two that I wanted to hear argument on.

9 The first one was, with respect to Count One,  
10 paragraph 2, "Please identify by name the others to whom the  
11 pills were allegedly distributed," are we talking here about  
12 many people, a few people? What are we talking about?

13 MR. KAMARAJU: I think that the government has  
14 identified its -- it would be under ten people that the  
15 government has been able to specifically as identify having  
16 received pills. We suspect there are more but in terms of  
17 names, it would be under ten.

18 THE COURT: I think those should be identified. I'm  
19 going to grant that request, with the caveat that there you can  
20 supplement right up to two weeks before trial.

21 Similarly, with respect to Count One, paragraph 11,  
22 "the names of the physicians and the location of the physician  
23 offices around New York City for which prescription forms were  
24 stolen," what are we talking about there, in terms of number?

25 MR. KAMARAJU: At this point, I believe the

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1 government's identified, again, I would say under ten.

2 THE COURT: Okay. So same ruling: It's granted but  
3 you are free to supplement up to two weeks before trial.

4 MR. KAMARAJU: Okay.

5 THE COURT: Now, I think if you look at all the  
6 remaining ones, because this is, and quite fairly so, a  
7 detailed list going on for quite a few pages but I think my  
8 rulings make clear how I would resolve all the others. If you  
9 have any doubts about any one, you can call me jointly and I  
10 will give you a ruling over the phone.

11 I think we have disposed of all the motions. Yes?

12 MS. LEWIS: There is just one issue that was raised in  
13 the motion regarding the bill of particulars, in addition to  
14 the particulars themselves, that I think is very important in  
15 the context of defining the parameters of the allegations here;  
16 and that is, there are a lot of prescriptions that are provided  
17 and I had a call together with the government to narrow down  
18 what we're talking about here between the beginning of 2011 and  
19 June of 2013, and that's the period during which an audit was  
20 conducted on the Brooklyn and Queens pharmacies that are the  
21 subject of this indictment.

22 What isn't included and what I don't have any guidance  
23 as to -- and I did mention this in the motions as well -- is  
24 the prescriptions, if any, they allege are fraudulent after the  
25 time period of that audit. And I find it very troubling that



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1 we are now in a posture where the government has kindly offered  
2 on the one hand to let us know on a rolling basis if they  
3 determine that any of these prescriptions from the Queens  
4 pharmacy after 2013 are fraudulent but that I don't know when  
5 they would provide these, we can't -- it's a moving target, I  
6 don't know how we can probably make decisions and prepare for a  
7 trial without knowing if they actually do believe that any of  
8 those were fraudulent. And, similarly, they have told us --

9 THE COURT: So, since the government is providing that  
10 information but on a rolling basis, what you want is a cutoff  
11 date?

12 MS. LEWIS: I do, and I want it soon.

13 THE COURT: Okay. So what do you suggest as the  
14 cutoff date?

15 MS. LEWIS: I think, given the amount of time it will  
16 take us to do this, I think by the end of the month, if they  
17 can provide it to us within the next week or so.

18 THE COURT: Yes.

19 MR. KAMARAJU: I would just note, for the bill of  
20 particular that we just discussed, which were other individuals  
21 who received pills, which is going to capture a subset of  
22 exactly what Ms. Lewis is talking about, setting a cutoff of  
23 two weeks before trial, I would think that that's an  
24 appropriate cutoff.

25 THE COURT: Yes, that's what I think too. That

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1 doesn't mean that you shouldn't give them as much as you can  
2 immediately upon identifying it, but the list will not be  
3 definitively closed until two weeks before trial.

4 MR. KAMARAJU: Absolutely. The minute the government  
5 knows -- and what we have just informed the Court, what we had  
6 offered to do for those prescriptions -- the minute the  
7 government has identified to the government's satisfaction that  
8 a prescription is fraudulent, we will produce that exact  
9 prescription to defense counsel, so they will have a name in an  
10 unredacted form pursuant the protective order.

11 THE COURT: Right.

12 MS. LEWIS: I just have one other thing, which is,  
13 regarding the prescriptions that are -- or, I'm sorry, the  
14 drugs that don't involve a prescription, that are filled  
15 without a prescription, we have no guidance at all as to when  
16 they allege that that happened. We just have a number between  
17 2011 -- and it's limited again -- between the beginning of 2011  
18 and the end of the audit in 2013 in which that audit found that  
19 there were 430,000 pills that are not accounted for and, in  
20 very vague terms, they say they were ordered, there was a  
21 dispensed number, they subtract out any pills that there was a  
22 theft or stolen report made as to those pills, and then there's  
23 just the remainder of these 430,000, we don't know who's  
24 alleged to be involved with filling of these or the providing  
25 of these drugs, whether it's our clients, other people that are

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1 alleged, how they even allege they're related to their clients,  
2 are they on the street, are they in pharmacies. We don't know  
3 anything. And I would hope we get something more as to what  
4 their theory is there or what their allegations are.

5 MR. KAMARAJU: Well, I think, by definition, the  
6 allegation is that there is no identifying information for the  
7 pills that were dispensed. If there were a prescription, I  
8 could provide the prescription to defense counsel, but the  
9 point is that there are a number of pills that are not  
10 accounted for by an audit, by Lilian Jakacki, and that they are  
11 not tied to any sort of prescription. So the government is  
12 similarly in the dark with respect to where those pills went.  
13 I don't have --

14 THE COURT: I'm with you and I think if further  
15 information is developed, you may want to provide that, but in  
16 terms of a bill of particulars, that request is denied.

17 Now, I think the only thing that remains is to set a  
18 trial date. How long a trial are we talking about? Let me ask  
19 the government first.

20 MR. KAMARAJU: I think the government's case would be,  
21 at most, between a week and a half, maybe two weeks.

22 THE COURT: Is there likely to be a meaningful defense  
23 case here?

24 MS. LEWIS: I think we would say a week would be a  
25 reasonable assumption.

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1 THE COURT: Okay. So I'm going to put aside three  
2 weeks, although I think that's going to be more than we need  
3 but they will be at least available.

4 So what dates in June and July are counsel not  
5 available?

6 MR. PERLMUTTER: Judge, I am gone pretty much the  
7 entire month of May, working on a CJA case out of New York.

8 THE COURT: Okay. Then I certainly won't start the  
9 trial before June 1st.

10 MR. PERLMUTTER: That would be great, that would be  
11 great. And hopefully I'll show up then; if you start at 9:00,  
12 I'll be here at 9:30 on June 1st.

13 THE COURT: No, I understand. So, we would not want  
14 to start the trial in early June.

15 MR. PERLMUTTER: That's exactly that's my main  
16 concern, Judge.

17 THE COURT: Okay.

18 MS. LEWIS: I had looked into this previously and I  
19 apologize but I'm not sure of specific dates, but Joshua  
20 Dratel, also in my office, if we did go to trial, would try the  
21 case with me. I believe that he has a trial scheduled for June  
22 and so I am not exactly sure where that falls, and I know that  
23 doesn't provide very much --

24 THE COURT: We've got to set the trial date today. I  
25 indicated previously that was one of the things we were going

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1 to do today. But let me hear from final counsel.

2 MR. RAPAWY: June, your Honor, I have a commitment  
3 from June 6th till June 20th and then I have another commitment  
4 in July, from July 1st to the 14th, and then I would be free  
5 after the week of, I guess, July 18th.

6 THE COURT: Well, I'm sitting on the Ninth Circuit  
7 from July 19th through July 22nd, although the only cases they  
8 give me are ones where they're in opposition to the Second  
9 Circuit. But how about starting the trial -- this will be the  
10 latest I can give you -- we can start the trial on Wednesday,  
11 July 27th, and I'm free for three weeks thereafter, so how  
12 about that? Any problem with that?

13 MR. PERLMUTTER: Judge, on August 1st. I'm scheduled  
14 to leave with my family for a summer vacation.

15 THE COURT: Well, then we're going to have to find an  
16 earlier date. First of all, I cannot put this over, consistent  
17 with the Speedy Trial Act or anything else, until September  
18 because I've got a three-month trial starting in September, so  
19 this case is going to be tried before the summer is over. Now,  
20 if you want to take a few minutes and the three of you talk  
21 among yourselves, I'm willing, with exception of one or two  
22 situations, like the Ninth Circuit, where I have a problem, to  
23 try to meet whatever date you guys want to come up with. It  
24 can be June, it can be July, it can be August, but it's not  
25 going to be September or thereafter.

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CONFERENCE

1 (Pause)

2 THE COURT: While you're all talking, I'm just looking  
3 at one possibility you might want to consider, which would be  
4 starting on July 6th and I don't have to go to the Ninth  
5 Circuit until I leave on July 19th, so that's only two weeks,  
6 but I'm reasonably confident, actually, this case can be tried  
7 in two weeks.

8 MR. PERLMUTTER: Judge, could we ask for June 20th?

9 THE COURT: The problem is, the only trip I have  
10 scheduled the entire summer, which is to Israel, I leave on the  
11 25th and I will be back on July 2nd.

12 MR. PERLMUTTER: One second, Judge?

13 (Pause)

14 THE COURT: My courtroom deputy points out that  
15 another possibility might be starting August 15th. I'm  
16 confident we'd be through by the beginning of September, when I  
17 start that other trial.

18 MR. RAPAWY: Your Honor, just so you know where we're  
19 thinking, I can move my June trial date -- that's a state date  
20 that can be moved -- but the July date, I'm just not going to  
21 have any flexibility.

22 THE COURT: Well, I'm not remembering everyone's  
23 problems, but how about starting it then sometime early in  
24 June? I can even give you parts of May, if you wanted to go  
25 that early.

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1 MR. PERLMUTTER: Judge, from May 10th to May 29th, I'm  
2 traveling on a CJA case.

3 THE COURT: Okay. So how about starting, say, like  
4 June 6th and if we went three weeks -- there's a day here and a  
5 day there I'm out of pocket but nothing major.

6 MS. LEWIS: Unfortunately, I did check with my office,  
7 and Mr. Dratel's trial starts 5/31, it's an S.D.N.Y. trial and  
8 I think it's scheduled or --

9 THE COURT: Well, I think we're back to July or  
10 August.

11 MR. PERLMUTTER: Could we do August 22nd?

12 THE COURT: Let me look at that. August 22nd? Yes,  
13 we can do August 22nd.

14 MS. LEWIS: I think that would be fine, your Honor,  
15 although I note that there is a bar conference at the end of  
16 that week at which we have an interest in attending.

17 THE COURT: You know, I know that missing that  
18 conference is certainly cruel and unusual punishment, but  
19 anyway, if things are moving reasonably well, we can take a day  
20 off here or there.

21 MS. LEWIS: It may require just one day off  
22 potentially but that's fine.

23 THE COURT: Okay. So we're all agreed on August 22nd  
24 then.

25 MR. PERLMUTTER: Yes, Judge.

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CONFERENCE

1 MR. RAPAWY: Yes.

2 THE COURT: Great, terrific.

3 Pursuant to Section 3161 of Title 18, I will exclude  
4 all time between now and August 22nd, finding that such time is  
5 necessary to accommodate the other commitments of counsel and  
6 that, for those and other reasons, the best interests of  
7 justice in excluding such time substantially outweighs the  
8 interests of the public and the defendants in a speedy trial.

9 Anything else we need to take up today?

10 MR. KAMARAJU: I think your Honor was going to set a  
11 schedule for the bill of particulars.

12 THE COURT: Oh, yes. So two weeks from today?

13 MR. KAMARAJU: That would be great, your Honor.

14 THE COURT: Okay, excellent.

15 All right, anything else we need to take up?

16 MR. PERLMUTTER: No, your Honor, not from us.

17 THE COURT: Anything from the defense?

18 MS. LEWIS: No, your Honor.

19 MR. RAPAWY: No, your Honor.

20 THE COURT: Very good. Thanks very much.

21 MR. KAMARAJU: Thank you, your Honor.

22 (Adjourned)